

1970

## c 104 Day Nurseries Act

Ontario

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## CHAPTER 104

## The Day Nurseries Act

## 1. In this Act,

Interpre-  
tation

- (a) "band" and "council of the band" have the same meaning as in the *Indian Act* (Canada); R.S.C. 1952,  
c. 149
- (b) "Board" means the Board of Review established under section 7;
- (c) "day nursery" means a place that receives for temporary custody for a continuous period not exceeding twenty-four hours more than three children under ten years of age not of common parentage and that is not,
  - (i) part of a public school under *The Public Schools Act*, R.S.O. 1970,  
c. 385
  - (ii) part of a separate school under *The Separate Schools Act*, R.S.O. 1970,  
c. 430
  - (iii) part of a private school registered under *The Department of Education Act*, or R.S.O. 1970,  
c. 111
  - (iv) a children's mental health centre under *The Children's Mental Health Centres Act*; R.S.O. 1970,  
c. 68
- (d) "Director" means the Director of the Day Nurseries Branch of the Department of Social and Family Services;
- (e) "licensed day nursery" means a day nursery licensed under this Act;
- (f) "Minister" means the Minister of Social and Family Services;
- (g) "municipality" means a city, town, village, township or county and includes a metropolitan municipality, but does not include a local municipality in a metropolitan municipality;
- (h) "operator" means a person or a partnership or association of persons that has the control and management of a day nursery, and "operate" has a corresponding meaning;
- (i) "regulations" means the regulations made under this Act. 1966, c. 37, s. 1; 1968-69, c. 23, s. 1.

Establish-  
ment of day  
nurseries  
by muni-  
cipalities  
By-laws  
re grants

**2.—(1)** The council of a municipality may by by-law provide for the establishment of day nurseries.

(2) The council of a municipality may pass by-laws granting aid to day nurseries.

Agreements  
to provide  
day  
nurseries

(3) The council of a municipality may enter into an agreement with any person or organization operating a licensed day nursery for the furnishing of such day nursery services for such children as is agreed upon, and the municipality may make such expenditures as are necessary for the purpose.

Establish-  
ment by  
Minister

(4) The Minister with the approval of the Lieutenant Governor in Council may establish day nurseries in areas without municipal organization. 1966, c. 37, s. 2.

Grants

**3.—(1)** There shall be paid to every municipality an amount equal to 80 per cent of its costs, computed in accordance with the regulations,

(a) for the operation and maintenance or the renovation of every licensed day nursery established by the municipality; and

(b) under agreements entered into under subsection 3 of section 2. 1966, c. 37, s. 3 (1).

Grants to  
Indian bands

(2) Where a council of a band establishes a day nursery, or enters into an agreement with any person or organization operating a licensed day nursery for the furnishing of such day nursery services for such children as is agreed upon, the band is entitled to the payments referred to in subsection 1 in the same manner as if the band were a municipality. 1968-69, c. 23, s. 2; 1970, c. 88, s. 1.

Director  
of day  
nurseries

**4.—(1)** There shall be a Director of the Day Nurseries Branch of the Department of Social and Family Services who shall perform the duties vested in him by this or any other Act. 1966, c. 37, s. 4 (1); 1968-69, c. 23, s. 3 (1).

Vacancies

(2) Where the Director is absent or there is a vacancy in his office, the powers and duties of the Director may be exercised and performed by such employee of the Department of Social and Family Services as the Minister may designate. 1966, c. 37, s. 4 (2); 1968-69, c. 23, s. 3 (2).

Licences

**5.** No person shall operate a day nursery without a licence therefor issued by the Director in accordance with the regulations, and the licence may be subject to terms and conditions. 1966, c. 37, s. 5 (1).

**6.** Subject to sections 7, 8, 9, 10, 11, 12, 13 and 14, the Director may revoke or refuse to issue or renew a licence where, Refusal or revocation of licence

- (a) the operator does not comply with the regulations; or
- (b) the day nursery is operated,
  - (i) in contravention of this Act or the regulations,
  - (ii) in breach of a term or condition of the licence, or
  - (iii) in a manner that, in the opinion of the Director, is contrary to the best interests of the public or of the children. 1968-69, c. 23, s. 5, *part*.

**7.—**(1) The Lieutenant Governor in Council may appoint a board, consisting of not more than five members, to be known as the Board of Review and may designate one member of the Board as chairman. Board of Review

(2) Three members of the Board constitute a quorum. Quorum

(3) The members of the Board shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time may determine. 1968-69, c. 23, s. 5, *part*. Remuneration

**8.—**(1) Where the Director refuses to issue or renew or proposes to revoke a licence, he shall give notice thereof to the applicant or licensee, together with written reasons for his refusal or proposed revocation and a notice stating the right to a hearing by the Board, and the applicant or licensee may, by written notice given to the Director and the Board within fifteen days after the receipt of the notice of refusal or proposed revocation, require a hearing by the Board. Where Director refuses to issue or renew or proposes to revoke

(2) The Board shall fix a date for the hearing and shall serve notice of the hearing on the parties at least ten days before the day fixed. Hearing by Board

(3) The notice of hearing shall contain, Contents of notice

- (a) a statement of the time and place of the hearing;
- (b) a reference to the rules of procedure applicable to the hearing; and
- (c) a statement that, if a party who has been duly notified does not attend at the hearing, the Board may proceed in his absence and he is not entitled to notice of any further proceedings. 1968-69, c. 23, s. 5, *part*.

**9.—**(1) The Director, the applicant or licensee and any other person specified by the Board are parties to the hearing. Parties

(2) If a person who has been duly notified of a hearing does not attend, the Board may proceed in his absence and he is not entitled to notice of any further proceedings. 1968-69, c. 23, s. 5, *part*. Failure to attend

Adjourn-  
ment

**10.**—(1) A hearing may be adjourned from time to time by the Board on reasonable grounds,

- (a) on its own motion; or
- (b) on the motion of any party to the hearing.

## Subpoena

(2) The Board may command the attendance before it of any person as a witness.

## Oaths

(3) The Board may require any person,

- (a) to give evidence on oath at a hearing; and
- (b) to produce such documents and things as the Board requires.

## Idem

(4) The Board may admit evidence not given under oath.

## Evidence

(5) At a hearing before the Board,

- (a) except where otherwise provided in this subsection, the common law and statutory rules of evidence apply;
- (b) evidence not admissible under clause *a* may be admitted by the Board in its discretion if to do so may expedite the hearing and will not prejudice any party; and
- (c) the Board may admit evidence in the form of a copy or an excerpt of a document if the document itself is not readily available.

## Offences

(6) Any person who, without lawful excuse,

- (a) on being duly summoned as a witness before the Board, makes default in attending; or
- (b) being in attendance as a witness before the Board, refuses to take an oath legally required by the Board to be taken, or to produce any document or thing in his power or control legally required by the Board to be produced by him, or to answer any question to which the Board may legally require an answer; or
- (c) does any other thing that would, if the Board had been a court of law having power to commit for contempt, have been contempt of that court,

is guilty of an offence. 1968-69, c. 23, s. 5, *part*.

Enforce-  
ment

(7) The Board may certify an offence under subsection 6 to the High Court and that court may thereupon inquire into the offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. 1968-69, c. 23, s. 5, *part*.

**11.—**(1) Any party may be represented before the Board by counsel or agent. Right of party to counsel

(2) Any witness may be represented before the Board by counsel or agent, but at the hearing the counsel or agent may only advise the witness and state objections under the provisions of the relevant law. Right of witness to counsel

(3) Any party who is present at a hearing before the Board may call and examine his witnesses, cross-examine opposing witnesses and present his arguments and submissions. 1968-69, c. 23, s. 5, *part*. Rights of parties at hearing

**12.** Upon a review, the Board shall hear such evidence as is submitted to it that in its opinion is relevant to the matter in dispute, and all oral evidence submitted shall be taken down in writing. 1968-69, c. 23, s. 5, *part*. Evidence

**13.—**(1) The Board may, after the hearing, confirm or alter the decision of the Director or direct the Director to do any act the Director is authorized to do under this Act and as the Board considers proper, and for this purpose the Board may substitute its opinion for that of the Director. Powers of Board

(2) The decision of the Board, including the reasons therefor, shall be in writing. Decision to be in writing

(3) The reasons for the decision shall contain, Contents of reasons for decision

(a) the findings of fact on the evidence and any information or knowledge used in reaching the decision;

(b) any agreed findings of fact; and

(c) the conclusions of law based on the findings mentioned in clauses *a* and *b*.

(4) The Board shall serve each party with a copy of its decision, together with the reasons therefor and a notice stating the right to an appeal under section 14. 1968-69, c. 23, s. 5, *part*. Notice of decision

**14.—**(1) Where the Board has held a hearing and given its decision, any party to the hearing may appeal to a justice of appeal of the Court of Appeal. Appeal

(2) Every appeal under subsection 1 shall be by notice of motion served upon the chairman of the Board within thirty days after service of the decision of the Board under subsection 4 of section 13 and the practice and procedure in relation to the appeal shall be the same as on an appeal from a judgment of a judge of the Supreme Court in an action. Form of appeal

(3) The chairman of the Board shall certify to the Registrar of the Supreme Court, Material on appeal

(a) the notices referred to in subsections 1 and 2 of section 8;



- (b) the decision of the Board together with the reasons therefor;
- (c) any intermediate rulings or orders made in the course of the proceedings by the Board;
- (d) a transcript of the oral evidence received at the hearing; and
- (e) all written submissions to the Board and other material including documentary evidence received by it in connection with the hearing.

Power of  
judge on  
appeal

(4) Where an appeal is taken under this section, the judge may confirm or alter the decision of the Board or direct the Director to do any act the Director is authorized to do under this Act and as the judge considers proper, and for this purpose the judge may substitute his opinion for that of the Board. 1968-69, c. 23, s. 5, *part.*

Provincial  
supervisors

**15.**—(1) The Minister may designate any employee of the Department of Social and Family Services as a provincial supervisor who may at all reasonable times and upon producing proper identification enter any day nursery or any premises that he on reasonable and probable grounds believes is being used as a day nursery and inspect the facilities and the books of account, enrolment records and other records therein.

Access for  
inspections

(2) Every person when requested so to do by a provincial supervisor shall permit the entry and inspection by the supervisor of the premises referred to in subsection 1 and shall produce and permit inspection of the books of account, enrolment records and other records therein and supply extracts therefrom. 1968-69, c. 23, s. 6.

Obstructing  
inspection

(3) No person shall hinder or obstruct a provincial supervisor in the performance of his duties or refuse to permit him to carry other records therein and supply extracts therefrom. 1968-69, c. 23, s. 6.

Regulations

**16.** The Lieutenant Governor in Council may make regulations,

- (a) governing and regulating day nurseries or any class thereof;
- (b) prescribing procedures for the issuance and renewal of licences by the Director;
- (c) prescribing the fee payable by an applicant for a licence or renewal of a licence;
- (d) prescribing the manner of computing costs for the purposes of section 3;

- (e) prescribing additional duties of the Board;
- (f) prescribing the forms to be used and the records that shall be kept under this Act;
- (g) prescribing additional duties of the Director;
- (h) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1966, c. 37, s. 7; 1968-69, c. 23, s. 7.

**17.**—(1) Every person who contravenes section 5 is guilty of an offence and on summary conviction is liable to a fine of not more than \$20 for each day on which such offence continues. 1966, c. 37, s. 8 (1); 1968-69, c. 23, s. 8. Penalties

(2) Every person who contravenes section 15 is guilty of an offence and on summary conviction is liable to a fine of not more than \$500. 1966, c. 37, s. 8 (2). Idem

**18.** The moneys required for the purposes of subsection 4 of section 2 and section 3 shall be paid out of the moneys appropriated therefor by the Legislature. 1966, c. 37, s. 9. Moneys

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